86-1107

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. _____

DANIEL H. HENDERSON,
Petitioner

- vs -

STATE OF CONNECTICUT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE APPELLATE COURT OF THE
STATE OF CONNECTICUT

JOHN R. WILLIAMS
WILLIAMS and WISE
51 Elm St., Suite 409
New Haven, CT 06510

Counsel for Petitioner

20pp

QUESTION PRESENTED

1. Did the Connecticut Appellate Court effectively deny Petitioner his Sixth and Fourteenth Amendments right to effective assistance of trial counsel by unreasonably denying him a speedy and effective remedy which could have been fully resolved before imposition of sentence?

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
OPINION BELOW.....	2
JURISDICTION.....	3
QUESTION PRESENTED.....	4
CONSTITUTIONAL PROVISION.....	5
RULES INVOLVED.....	6
STATEMENT OF THE CASE.....	7
REASONS FOR GRANTING CERTIFICATION...	11
THE CONNECTICUT APPELLATE COURT EFFECTIVELY DENIED PETITIONER HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY UNREASONABLY DENYING HIM A SPEEDY AND EFFECTIVE REMEDY WHICH COULD HAVE BEEN FULLY RESOLVED BEFORE IMPOSITION OF SENTENCE.....	11
CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page
Cuyler v. Sullivan, 446 U.S. 335 (1980).....	13
Glasser v. United States, 315 U.S. 60 (1942).....	13
Holloway v. Arkansas, 435 U.S. 475 (1978).....	13
McMann v. Richardson, 397 U.S. 759 (1970).....	11
Tollett v. Henderson, 411 U.S. 258 (1973).....	11
United States v. Agurs, 427 U.S. 97 (1976).....	11
United States v. DeCoster, 624 F.2d 196 (D.C.Cir. 1976)...	11

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NO. _____

DANIEL H. HENDERSON,
Petitioner

- vs -

STATE OF CONNECTICUT,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

The petitioner, DANIEL H. HENDERSON, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Appellate Court of the State of Connecticut entered in this proceeding on July 29, 1986.

OPINION BELOW

The opinion of the Appellate Court of the State of Connecticut is reported at 8 Conn. App. 342, 512 A.2d 974 (1986), and appears in the Appendix hereto.

JURISDICTION

The opinion of the Appellate Court of the State of Connecticut was entered on July 29, 1986. A timely petition for review of the Appellate court decision by the Supreme Court of the State of Connecticut was denied on October 29, 1986. This petition for certiorari has been filed within 60 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

1. Did the Connecticut Appellate Court effectively deny Petitioner his Sixth and Fourteenth Amendments right to effective assistance of trial counsel by unreasonably denying him a speedy and effective remedy which could have been fully resolved before imposition of sentence?

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment VI:

In all criminal prosecutions, the accused shall the enjoy the right...to have the assistance of counsel for his defense.

U.S. Constitution, Amendment XIV:

...No state shall...deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

RULES INVOLVED

Connecticut Practice Book, Section 903:

Unless otherwise permitted by the judicial authority in the interests of justice, a motion for a new trial shall be made within five days after a verdict or finding of guilty or within any further time the judicial authority allows during the five-day period.

Connecticut Practice Book, Section 935:

The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner.

STATEMENT OF CASE

Daniel H. Henderson, having been charged in the Connecticut Superior Court with several crimes, entered pleas of guilty in consolidated proceedings. He was sentenced to terms which included a period of imprisonment and was immediately incarcerated.

Eighteen days later, having obtained a new attorney, he moved pursuant to Section 903 of the Connecticut Practice Book for a new trial and pursuant to Section 935 of the Connecticut Practice Book to correct an illegal sentence. Both motions were supported by his own lengthy affidavit and the supporting affidavits of several other witnesses, asserting in great detail that his previous attorneys had engaged in a course of deception which caused him to

enter his guilty pleas in the belief that he would receive a sentence of probation without incarceration or a jail sentence far shorter than those actually imposed. He expressly alleged, as did his witnesses, that his earlier attorneys had assured him that they had a close personal relationship with the judge and that they promised sentence would in fact be imposed were he to plead guilty and to stand by that plea. In fact, there was no agreement with the sentencing judge, no promises had been made or assurances given, and Mr. Henderson received only that sentence considered appropriate by the Court. Had he known the true state of facts, he asserted that he would not have pled guilty.

Mr. Henderson acted expeditiously in obtaining new counsel and explaining his

circumstances to the trial Court, but owing to his incarceration he was unable to do so until several days after sentencing. Within the time provided for taking an appeal, however, he changed his attorney and filed the motions noted previously. The trial Court heard oral argument on those motions, but refused to take evidence and denied the motions without opinion or any statement of reasons. Presumably the trial Court agreed with the prosecution argument that the issues presented should be raised only by habeas corpus petition in another court and not by a motion for new trial or motion to correct.

A timely appeal was filed in the Connecticut Appellate Court, and that Court affirmed holding that "both motions, no

matter how they are couched, raise the claim of ineffective assistance of counsel. We will not review the defendant's claim of ineffective assistance of counsel. We heed our Supreme Court's admonition that habeas corpus proceedings rather than direct appeals are best suited to test the performance of counsel, including those claims arguably supported by the record as well as those requiring an evidentiary hearing." The Connecticut Supreme Court declined to review the matter, and this petition was filed.

REASONS FOR GRANTING THE WRIT

THE CONNECTICUT APPELLATE COURT EFFECTIVELY DENIED PETITIONER HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL BY UNREASONABLY DENYING HIM A SPEEDY AND EFFECTIVE REMEDY WHICH COULD HAVE BEEN FULLY RESOLVED BEFORE IMPOSITION OF SENTENCE.

Although a full evidentiary hearing undoubtedly would be required, it appears very likely that if the Petitioner substantiates the claims contained in the affidavits reproduced at Appendix C, his conviction will be ordered set aside. See generally, McMann v. Richardson, 397 U.S. 759 (1970); Tollett v. Henderson, 411 U.S. 258 (1973); United States v. Agurs, 427 U.S. 97 (1976); United States v. DeCoster, 624 F.2d 196 (D.C.Cir. 1976). The Connecticut courts, however, by unreasonably burdening Petitioner with irrational

procedural requirements, would effectively deny him any meaningful opportunity to be heard on his claim by requiring in effect that he begin serving his sentence before pursuing the matter. Since the sentence involved in this case -- incarceration for a period of six months, to be followed by probation -- in all likelihood would have been entirely served before Mr. Henderson could have obtained a ruling on a state habeas corpus petition.

Mr. Henderson, however, presented his claim to the trial Court before imposition of sentence. The trial Court could have resolved the matter speedily, as it was of all courts the most familiar with the factual basis for the claim.

This Court has made it clear that assuring constitutionally effective

assistance of counsel in criminal cases is the responsibility primarily of the trial Court. E.g., Holloway v. Arkansas, 435 U.S. 475 (1978); Cuyler v. Sullivan, 446 U.S. 335 (1980). See also, Glasser v. United States, 315 U.S. 60 (1942). The effect of the Connecticut Appellate Court opinion in this case is in exactly the opposite direction. Connecticut's policy now is one of encouraging trial judges to avoid resolution of these issues and to pass the cases to other judges in other courts months or years after the events have taken place. This policy, although ostensibly predicated upon state procedural rules, profoundly implicates federal constitutional rights and the policy of this Court. In long run, the surest guarantee that Sixth Amendment rights will be

protected and respected lies in encouraging trial judges to take personal responsibility for the enforcement of those rights at the time of trial. In the present case, Connecticut has adopted a policy of discouraging trial judges from shouldering that responsibility.

Accordingly, a writ of certiorari should issue in this case to assure that Connecticut will not maintain its present course of discouraging the vigorous enforcement of the Sixth Amendment in its courts.

CONCLUSION

For these reasons, to encourage trial-level enforcement of the Sixth and Fourteenth Amendments, a writ of certiorari should issue to review the judgment and opinion of the Appellate Court of the State of Connecticut.

Respectfully submitted:

JOHN R. WILLIAMS
WILLIAMS & WISE
51 Elm St., Suite 409
New Haven, CT 06510
203) 562-9931
Attorney for Petitioner